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*Attorney for Plaintiff Craig Cunningham*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CRAIG CUNNINGHAM,

Plaintiff,

v.

PERFORMANCE SLC LLC,  
PERFORMANCE SETTLEMENT  
LLC, DANIEL J. CRENSHAW, and  
DOES 1-10,

Defendants.

Case No. 8:18-cv-01093

COMPLAINT FOR:

1. ILLEGAL ROBOCALLING, 47 U.S.C. § 227(b)
2. ILLEGAL TELEMARKETING, 47 U.S.C. § 227(c)
3. UNFAIR COMPETITION, CAL. BUS. & PROF. CODE §§ 17200 *et seq.*

**DEMAND FOR JURY TRIAL**

Plaintiff Craig Cunningham, by his undersigned counsel, for this Complaint against Defendants Performance SLC LLC, Performance Settlement LLC, Daniel J. Crenshaw and Does 1-10 (collectively, "Performance" or "Defendants"), and their present, former and future direct and indirect parent companies, subsidiaries, affiliates and agents, alleges as follows:

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**I. INTRODUCTION**

10 1. Nature of Action. Plaintiff brings this cases under the Telephone  
11 Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), because Defendants made at  
12 least 63 nonconsensual telemarketing calls and at least 5 nonconsensual  
13 telemarketing text messages to his residential cellular telephone, each in violation  
14 of 47 U.S.C. § 227(c), which used artificial or prerecorded voices and/or were  
15 placed by an automatic telephone dialing system (“ATDS”), in violation of  
16 47 U.S.C. § 227(b).

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**II. PARTIES**

1. Plaintiff. Plaintiff is a natural person, a “person” as defined by 47 U.S.C.  
§ 153(39) and a citizen of the State of Texas.

2. SLC. Defendant Performance SLC LLC (“SLC”) is a limited liability  
company organized under the laws of the State of California with its principal  
place of business at 17748 Sky Park Circle, Suite 150, Irvine, California 92614. Its  
sole member is Defendant Daniel J. Crenshaw.

3. Settlement. Defendant Performance Settlement LLC (“Settlement”) lis a  
limited liability company organized under the laws of the State of California with  
its principal place of business at 17748 Sky Park Circle, Suite 150, Irvine,  
California 92614. Its sole member is Defendant Daniel J. Crenshaw.

4. Crenshaw. Defendant Daniel J. Crenshaw is a natural person and the  
chief executive officer of SLC and Settlement with his principal place of business  
at 17748 Sky Park Circle, Suite 150, Irvine, California 92614.

5. Does. The true names and capacities, whether individual, corporate,  
associate, or otherwise, of the defendants sued herein as Does 1 through 10,  
inclusive, are currently unknown to Plaintiff, who therefore sues these defendants  
by such fictitious names. Plaintiff will seek leave of court to amend this Complaint  
to reflect the true names and capacities of the defendants designated hereinafter as  
Does when such identities become known.

7. Each of the defendants sued herein was the principal, agent, or employee of the other, and was acting within the scope of such agency or employment. Each defendant sued herein was the co-conspirator of the other and was acting within the course and scope of a conspiracy formed amongst each of them. Each defendant sued herein aided and abetted the other with the intent that each would be successful in their mutual endeavors. Each defendant sued herein received money or property as a result of the conduct described herein without consideration therefore and/or with knowledge that the money or property was obtained as a result of the wrongful conduct described herein. Each entity sued herein is a shell organization, and is actually the alter ego of the other defendants sued herein.

### III. JURISDICTION AND VENUE

8. Jurisdiction. This Court has federal-question subject matter jurisdiction over Plaintiff's TCPA claims pursuant to 28 U.S.C. § 1331 because the TCPA is a federal statute. *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012). This Court has supplemental subject matter jurisdiction over Plaintiff's claim arising under California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.*, because that claim:

- a. arises from the same nucleus of operative fact, i.e., Defendants' telemarketing robocalls to Plaintiff;
- b. adds little complexity to the case; and
- c. does not seek money damages, so it is unlikely to predominate over the TCPA claims.

9. Personal Jurisdiction. This Court has general personal jurisdiction over SLC and Settlement because each is a California LLC with its principal place of business in California.

10. This Court has general personal jurisdiction over Mr. Crenshaw because he resides in California.



1 18. The TCPA provides a private cause of action to persons who receive  
 2 calls in violation of § 227(c) or a regulation promulgated thereunder. 47 U.S.C. §  
 3 227(c)(5).

4 19. According to findings of the FCC, the agency vested by Congress with  
 5 authority to issue regulations implementing the TCPA, automated or prerecorded  
 6 telephone calls are a greater nuisance and invasion of privacy than live solicitation  
 7 calls and can be costly and inconvenient.

8 20. The FCC requires “prior express written consent” for all autodialed or  
 9 prerecorded telemarketing robocalls to wireless numbers and residential lines. In  
 10 particular:

11 [A] consumer’s written consent to receive telemarketing  
 12 robocalls must be signed and be sufficient to show that  
 13 the consumer: (1) received clear and conspicuous  
 14 disclosure of the consequences of providing the requested  
 15 consent, *i.e.*, that the consumer will receive future calls  
 16 that deliver prerecorded messages by or on behalf of a  
 17 specific seller; and (2) having received this information,  
 18 agrees unambiguously to receive such calls at a telephone  
 19 number the consumer designates. In addition, the written  
 20 agreement must be obtained without requiring, directly or  
 21 indirectly, that the agreement be executed as a condition  
 22 of purchasing any good or service.

23 *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*  
 24 *1991*, 27 FCC Rcd. 1830, 1844 ¶ 33 (2012) (footnote and internal quotation marks  
 25 omitted).

26 21. FCC regulations “generally establish that the party on whose behalf a  
 27 solicitation is made bears ultimate responsibility for any violations.” *In the Matter*  
 28

1 *of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 10  
 2 FCC Rcd. 12391, 12397 ¶ 13 (1995).

3 22. The FCC confirmed this principle in 2013, when it explained that “a  
 4 seller ... may be held vicariously liable under federal common law principles of  
 5 agency for violations of either section 227(b) or section 227(c) that are committed  
 6 by third-party telemarketers.” *In re Dish Network, LLC*, 28 FCC Rcd. 6574, 6574 ¶  
 7 1 (2013).

8 23. For TCPA purposes, a text message is a “call.” *Satterfield v. Simon &*  
 9 *Schuster, Inc.*, 569 F.3d 946, 951-52 (9th Cir. 2009).

10 24. A corporate officer involved in the telemarketing at issue may be  
 11 personally liable under the TCPA. *E.g., Jackson Five Star Catering, Inc. v.*  
 12 *Beason*, Case No. 10-10010, 2013 U.S. Dist. LEXIS 159985, at \*10 (E.D. Mich.  
 13 Nov. 8, 2013) (“[M]any courts have held that corporate actors can be individually  
 14 liable for violating the TCPA where they had direct, personal participation in or  
 15 personally authorized the conduct found to have violated the statute.” (internal  
 16 quotation marks omitted)); *Maryland v. Universal Elections*, 787 F. Supp. 2d 408,  
 17 415-16 (D. Md. 2011) (“If an individual acting on behalf of a corporation could  
 18 avoid individual liability, the TCPA would lose much of its force.”).

## 19 V. FACTUAL ALLEGATIONS

### 20 A. The Worsening Problem of Robocalls and Illegal Telemarketing

21 25. Unfortunately, the problems Congress identified when it enacted the  
 22 TCPA have grown only worse in recent years.

23 26. “Month after month, unwanted [communications], both telemarketing  
 24 and informational, top the list of consumer complaints received by the [Federal  
 25 Communications] Commission.” *In re Rules and Regulations Implementing the*  
 26 *TCPA of 1991*, 30 FCC Rcd. 7961, 7991 ¶ 1 (2015).

27 27. “Robocalls and telemarketing calls are currently the number one source  
 28 of consumer complaints at the FCC.” Tom Wheeler, *Cutting off Robocalls* (July

22, 2016), <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls> (statement of FCC Chairman).

28. “The FTC receives more complaints about unwanted calls than all other complaints combined.” Comment of the Staff of the Federal Trade Commission’s Bureau of Consumer Protection, *In re Rules and Regulations Implementing the TCPA of 1991, Notice of Proposed Rulemaking*, CG Docket No. 02-278, at p. 2; FCC 16-57 (June 6, 2016), *available at* [https://www.ftc.gov/system/files/documents/advocacy\\_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf).

29. In 2017, the FTC received 4,501,967 complaints about robocalls, compared with 3,401,614 in 2016. For every month in the fiscal year, robocalls made up the majority of consumer complaints about Do Not Call violations. Federal Trade Commission, *FTC Releases FY 2017 National Do Not Call Registry Data Book and DNC Mini Site* (Dec. 18, 2017), <https://www.ftc.gov/news-events/press-releases/2017/12/ftc-releases-fy-2017-national-do-not-call-registry-data-book-dnc>.

30. Recently, *The New York Times* reported extensively on the surging number of robocall complaints filed by consumers with the FTC and widespread consumer outrage about illegal telemarketing. Tara Siegel Bernard, *Yes, It’s Bad. Robocalls, and Their Scams, Are Surging*, N.Y. Times (May 6, 2018), <https://www.nytimes.com/2018/05/06/your-money/robocalls-rise-illegal.html>.

#### **B. Defendants’ Role in This Explosion of Illegal Robocalling**

31. Performance purports to sell services that consolidate, negotiate or eliminate debt. *Solve Your Student Loans and Get on with Life*, Performance SLC, <http://www.performanceslc.com/> (last visited June 15, 2018); *Welcome to Financial Freedom*, Performance Settlement, <http://www.performancesettlement.com/> (last visited June 15, 2018).



32. People are complaining online about unsolicited telemarketing calls and texts from Defendants. *E.g.*, *Performance Settlement*, Better Business Bureau, <https://www.bbb.org/sdoc/business-reviews/financial-services/performance-settlement-in-irvine-ca-172009579/reviews-and-complaints?section=complaints> (Sept. 27, 2018) (“This company, Performance SLC and Performance Settlement, engages in a massive fraudulent scheme of wire fraud through illegal telemarketing to protected and DNC registered cell phones by using a robodialer or ATDS in violation of 47 USC section 227(b)(1)(A). I was repeatedly called on my cell phone. My phone is on the do not call registry.”).

33. Moreover, the phone numbers that appeared as the caller IDs of the phone calls from Defendants to Plaintiff are the subject of consumer complaints. *E.g.*, *Student Loan Scam*, Reddit, [https://www.reddit.com/r/Scams/comments/72oa79/student\\_loan\\_scam/](https://www.reddit.com/r/Scams/comments/72oa79/student_loan_scam/) (statement of Canis07) (last visited June 16, 2018) (“I’ve been getting a lot of calls from 1-888-534-4656 pertaining to student loans. They leave a callback number as 1-310-803-9561. When I call them, they try to ask questions about my outstanding student loans (I don’t have any).”); *888-534-4656 Complaints*, Reported Calls, <https://www.reportedcalls.com/8885344656> (Oct. 2, 2017) (reporting prerecorded message or robocall from (888) 534-4656 regarding debt reduction); *Who Called You From (949) 201-1692?*, Should I Answer?, <https://www.shouldianswer.com/phone-number/9492011692> (last visited June 16, 2018) (showing a report about a “telemarketer” with “student loans” and another report about a “scam call” with a “debt forgiveness program”); *(714) 400-2617*, Security Master, <https://phonenumber.cmcm.com/us/7144002617> (last visited June 16, 2018) (reporting “harassment”).

34. One of Performance’s strategies for marketing its services is placing automated telemarketing text messages to those who have not consented to receive such solicitations, including Mr. Cunningham.



1           35. One of Performance's strategies for marketing its services is equipment  
2 that has the capacity to store or produce random or sequential telephone numbers  
3 to be called, using a random or sequential number generator.

4           36. One of Performance's strategies for marketing its services is placing  
5 calls with prerecorded or artificial voices to the residential cellular telephone  
6 numbers of consumers who have not provided prior express written consent to  
7 receive such telemarketing.

8       **C. Defendants' Illegal Robocalls to Plaintiff**

9           37. Mr. Cunningham never provided prior express written consent to receive  
10 calls or text messages from Defendants.

11          38. Mr. Cunningham never provided prior express consent to receive calls or  
12 text messages from Defendants.

13          39. Defendants knew that Mr. Cunningham had never provided prior express  
14 written consent to receive calls or text messages from Defendants.

15          40. Defendants knew that Mr. Cunningham had never provided prior express  
16 consent to receive calls or text messages from Defendants.

17          41. The total number of calls and text messages Mr. Cunningham received  
18 from Defendants is unknown, because the calls were relentless, used a variety of  
19 caller IDs and frequently came late at night or at other times when it was  
20 inconvenient to answer. So far, Plaintiff's investigation has revealed 63  
21 nonconsensual telemarketing calls and 5 nonconsensual telemarketing text  
22 messages from Performance to Plaintiff's residential cellular telephone.

23          42. The calls and text messages sent to Mr. Cunningham advertised  
24 Defendants' services.

25          43. The advertised services were debt relief, negotiation and/or  
26 consolidation.

27          44. No emergency necessitated the calls or text messages.

28          45. Each text message was sent by an ATDS.

1 46. Each call was placed by an ATDS.

2 47. Most of the calls used a prerecorded or artificial voice.

3 48. Defendants' calls and text messages injured Plaintiff because they:

4 a. interrupted him while working, spending time with family,  
5 working out and driving;

6 b. invaded his privacy;

7 c. annoyed him;

8 d. harassed him;

9 e. wasted his time;

10 f. consumed his phone's battery life; and

11 g. consumed his phone's limited data storage capacity.

12 **D. Defendants' Illegal Telemarketing to Plaintiff**

13 49. Plaintiff requested a copy of Settlement's do-not-call policy. Settlement  
14 stated that it had no such policy and refused to send Plaintiff anything.

15 50. Plaintiff requested a copy of SLC's do-not-call policy. SLC responded  
16 that it did not know what Plaintiff was referring to and did not provide a copy of  
17 the policy.

18 51. On information and belief, Defendants knowingly did not have a written  
19 do-not-call policy, available upon demand, while they were calling and sending  
20 text messages to Plaintiff.

21 52. On information and belief, Defendants knowingly failed to reasonably or  
22 adequately train their agents engaged in telemarketing on the existence and use of  
23 any do-not-call list.

24 53. Defendants knowingly made the solicitations without including therein  
25 all of the following: the name of the individual caller, the name of the person or  
26 entity on whose behalf the call is being made and/or a telephone number or address  
27 at which the person or entity may be contacted  
28

**E. Mr. Crenshaw's Control over Performance, Including its Illegal Robocalling and Telemarketing**

54. At all times relevant to the claims alleged herein, Mr. Crenshaw was the sole member of SLC and Settlement.

55. A "Borrower Beware" report by consumer finance site Nerd Wallet associates Mr. Crenshaw with SLC, Settlement and 5 other companies, at least 2 of which use the same Irvine address as SLC and Settlement.

56. Mr. Crenshaw directed the telemarketing at issue in this case.

57. Mr. Crenshaw was aware that SLC and Settlement were sending prerecorded robocalls and automated text messages *en masse* to people, including Plaintiff, who had not requested to be contacted by Defendants.

58. As Defendants' senior-most executive, Mr. Crenshaw had the power to stop these unsolicited telemarketing campaigns.

59. As Defendants' senior-most executive, Mr. Crenshaw hired, and had the power to fire, the executives managing the day-to-day operations of these illegal robocalling operations.

**F. Catalog of Calls**

60. Due to the large volume of telemarketing by Defendants to Mr. Cunningham, his investigation is ongoing. Based on what is known so far, the following table summarizes the non-emergency, non-consensual telemarketing calls made by or on behalf of Defendants to Mr. Cunningham's cellular telephone. This table excludes the countless number of calls that went unanswered and that therefore do not appear in Plaintiff's phone records, as well as the calls from caller IDs that Plaintiff has yet to identify as belonging to Defendants.

Date	Caller ID	Duration	Type
March 24, 2017	(888) 534-4656	19s	Call

<b>Date</b>	<b>Caller ID</b>	<b>Duration</b>	<b>Type</b>
March 25, 2017	(888) 534-4656	2m 9s	Call
March 25, 2017	(888) 534-4656	4m 23s	Call
March 25, 2017	(888) 534-4656	4m 19s	Call
April 11, 2017	(714) 400-2617	32s	Call
April 12, 2017	(714) 400-2617	13s	Call
April 17, 2017	(714) 400-2617	30s	Call
April 19, 2017	(714) 400-2617	47s	Call
April 20, 2017	(714) 400-2617	51s	Call
April 21, 2017	(714) 400-2617	20s	Call
April 21, 2017	(714) 400-2617	3m 13s	Call
April 24, 2017	(714) 400-2617	30s	Call
April 25, 2017	(714) 400-2617	30s	Call
April 27, 2017	(714) 400-2617	18s	Call
April 28, 2017	(714) 400-2617	30s	Call
May 2, 2017	(714) 400-2617	7m 7s	Call
May 4, 2017	(888) 534-4656	20s	Call
May 9, 2017	(949) 385-0591		Text message
May 10, 2017	(949) 385-0591		Text message
May 11, 2017	(949) 385-0591		Text message
May 12, 2017	(949) 385-0591		Text message
May 15, 2017	(949) 385-0591		Text message
May 19, 2017	(949) 201-1692	10s	Call
May 22, 2017	(949) 201-1692	31s	Call
May 22, 2017	(888) 534-4656	1m 5s	Call
May 24, 2017	(949) 201-1692	46s	Call
May 25, 2017	(949) 201-1692	11s	Call

<b>Date</b>	<b>Caller ID</b>	<b>Duration</b>	<b>Type</b>
May 25, 2017	(949) 201-1692	6s	Call
May 25, 2017	(949) 201-1692	3s	Call
May 25, 2017	(949) 201-1692	25s	Call
May 25, 2017	(949) 201-1692	6s	Call
May 25, 2017	(949) 201-1692	1s	Call
May 25, 2017	(949) 201-1692	Unknown; on information and belief, the caller promptly dropped the call	Call
May 26, 2017	(949) 201-1692	36s	Call
May 30, 2017	(949) 201-1692	21s	Call
May 30, 2017	(949) 201-1692	1s	Call
May 31, 2017	(949) 201-1692	10s	Call
June 1, 2017	(949) 201-1692	14s	Call
June 2, 2017	(949) 201-1692	21s	Call
June 6, 2017	(949) 201-1692	37s	Call
June 8, 2017	(949) 201-1692	21s	Call
June 14, 2017	(949) 201-1692	23s	Call
June 19, 2017	(949) 201-1692	9s	Call
June 20, 2017	(949) 201-1692	23s	Call
June 22, 2017	(949) 201-1692	18s	Call
July 7, 2017	(949) 201-1692	30s	Call
July 7, 2017	(949) 201-1692	30s	Call
July 11, 2017	(949) 201-1692	30s	Call
July 12, 2017	(949) 201-1692	30s	Call

<b>Date</b>	<b>Caller ID</b>	<b>Duration</b>	<b>Type</b>
July 14, 2017	(949) 201-1692	30s	Call
July 18, 2017	(949) 201-1692	6s	Call
July 20, 2017	(949) 201-1692	6s	Call
July 24, 2017	(949) 201-1692	28s	Call
July 28, 2017	(949) 201-1692	22s	Call
August 4, 2017	(929) 201-3145	32s	Call
August 4, 2017	(888) 534-4656	13s	Call
August 10, 2017	(888) 534-4656	20s	Call
August 11, 2017	(888) 534-4656	21s	Call
August 16, 2017	(888) 970-4329	50s	Call
August 22, 2017	(888) 534-4656	5s	Call
August 22, 2017	(888) 534-4656	5s	Call
August 22, 2017	(888) 534-4656	5s	Call
August 22, 2017	(888) 534-4656	5s	Call
August 24, 2017	(888) 534-4656	5s	Call
August 25, 2017	(949) 201-1692	5s	Call
August 26, 2017	(888) 534-4656	5s	Call
August 30, 2017	(888) 534-4656	5s	Call
August 30, 2017	(888) 534-4656	4s	Call

**VI. FIRST CLAIM FOR RELIEF**  
**(Illegal Robocalling, 47 U.S.C. § 227(b))**  
**(Against All Defendants)**

61. Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

62. The foregoing acts and omissions of Defendants and/or their affiliates or agents constitute multiple violations of the TCPA, 47 U.S.C. § 227(b)(1), by

1 making non-emergency telemarketing robocalls to Plaintiff's cellular telephone  
2 number without his prior express written consent.

3 63. Plaintiff is entitled to an award of at least \$500 in damages for each such  
4 violation. 47 U.S.C. § 227(b)(3)(B).

5 64. Plaintiff is entitled to an award of up to \$1,500 in damages for each such  
6 knowing or willful violation. 47 U.S.C. § 227(b)(3) (hanging paragraph).

7 65. Plaintiff also seeks a permanent injunction prohibiting Defendants and  
8 their affiliates and agents from making non-emergency robocalls to cellular  
9 telephone numbers advertising debt negotiation services without the prior express  
10 written consent of the called party.

11 **VII. SECOND CLAIM FOR RELIEF**  
12 **(Illegal Telemarketing, 47 U.S.C. § 227(c))**  
13 **(Against All Defendants)**

14 66. Plaintiff realleges and incorporates by reference each and every  
15 allegation set forth in the preceding paragraphs.

16 67. On information and belief, the foregoing acts and omissions of  
17 Defendants and/or their affiliates or agents constitute multiple violations of FCC  
18 regulations by making telemarketing solicitations despite lacking:

19 a. a written policy, available upon demand, for maintaining a do-  
20 not-call list, in violation of 47 C.F.R. § 64.1200(d)(1);

21 b. training for the individuals involved in the telemarketing on the  
22 existence of and use of a do-not-call list, in violation of 47 C.F.R. § 64.1200(d)(2);  
23 and,

24 c. in the solicitations, the name of the individual caller, the name  
25 of the person or entity on whose behalf the call is being made and/or a telephone  
26 number or address at which the person or entity may be contacted, in violation of  
27 47 C.F.R. § 64.1200(d)(4).  
28



1           68. On information and belief, had Defendants abided by the requirements  
2 of 47 C.F.R. § 64.1200(d), they would not have sent Plaintiff the illegal  
3 telemarketing.

4           69. Plaintiff is entitled to an award of at least \$500 in damages for each such  
5 violation. 47 U.S.C. § 227(c)(5)(B).

6           70. Plaintiff is entitled to an award of up to \$1,500 in damages for each such  
7 knowing or willful violation. 47 U.S.C. § 227(c)(5) (hanging paragraph).

8           71. Plaintiff also seeks a permanent injunction prohibiting Defendants and  
9 their affiliates and agents from making telemarketing solicitations until and unless  
10 they (1) implement a do-not-call policy, available upon demand, and training  
11 thereon and (2) include the names of the individual caller and the entity on whose  
12 behalf the call is being made and a call-back number in every solicitation.

### 13                               **VIII.    THIRD CLAIM FOR RELIEF**

14                           **(Unfair Competition, Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

15                                       **(Against All Defendants)**

16           72. Plaintiff realleges and incorporates by reference each and every  
17 allegation set forth in the preceding paragraphs.

18           73. Defendants' TCPA violations were committed in the State of California  
19 and targeted consumers and businesses across the country, including in the State of  
20 California, in violation of the "unlawful" prong of the UCL. *See O'Connor v. Lyft,*  
21 *Inc.*, No. 16-cv-00351-JSW, 2016 U.S. Dist. LEXIS 153705, at \*14-15 (N.D. Cal.  
22 Apr. 14, 2016) (violating the TCPA violates the UCL).

23           74. Additionally, Defendants' misconduct violated the "unfair" prong of the  
24 UCL. It was unfair for Mr. Cunningham's private life and family time to be  
25 interrupted by automated telemarketing dozens of times. The safety risk posed by  
26 unscheduled and unsolicited calls and text messages to Mr. Cunningham and his  
27 family while he was driving was unfair. It is unfair that legitimate and law-abiding  
28 student loan services have to compete against Defendants, ultimately harming

consumers. Given that the unfair prong of the UCL “is intentionally broad, thus allowing courts maximum discretion,” *State Farm Fire & Casualty Co. v. Superior Court*, 45 Cal. App. 4th 1093, 1103 (2d Dist. 1996), Defendants’ harassment would have violated the UCL even in the absence of the TCPA.

75. Mr. Cunningham seeks a permanent injunction prohibiting Defendants and their affiliates and agents from continuing to violate the UCL by sending unsolicited telemarketing calls or text messages from or to the State of California.

76. Such an injunction will enforce an important right affecting the public interest and confer a significant benefit, whether pecuniary or non-pecuniary, on a large class of persons. Private enforcement is necessary and places a disproportionate financial burden on Plaintiff in relation to Plaintiff’s stake in the matter, because the fraction of Defendants’ illegal telemarketing that was directed to Plaintiff is, unfortunately, tiny.

#### **IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Craig Cunningham prays for judgment against Defendants as follows:

A. Leave to amend this Complaint to name Does as they are identified and to conform to the evidence presented at trial;

B. A declaration that actions complained of herein by Defendants violate the TCPA and the UCL;

C. An order enjoining Defendants and their affiliates and agents from engaging in the unlawful conduct set forth herein;

D. An award of \$204,000 in statutory damages arising from Defendants’ 68 knowing or willful violations of 47 U.S.C. § 227(b) and 68 knowing or willful violations of 47 U.S.C. § 227(c);

E. An award to Mr. Cunningham of damages, as allowed by law under the TCPA;

1 F. An award to Mr. Cunningham of interest, costs and attorneys' fees, as  
2 allowed by law, equity and/or California Code of Civil Procedure section 1021.5;  
3 and

4 G. Such further relief as the Court deems necessary, just, and proper.

5 **X. DEMAND FOR JURY**

6 Mr. Cunningham demands a trial by jury for all issues so triable.

7  
8 RESPECTFULLY SUBMITTED AND DATED this 20th day of June,  
9 2018.

10  
11 By: s/ Jon Fougner  
12 Attorney for Plaintiff  
13 E-mail: Jon@FougnerLaw.com  
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